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June 17, 1991

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JUN 17 1991

Honorable Donna Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: White Broadcasting Partnership, et al.
Docket No. 91-10
JEM Productions Limited Partnership
File No. BPH891214ND

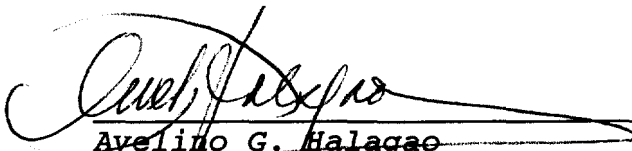
Dear Honorable Searcy:

Enclosed herewith on behalf of JEM Productions Limited Partnership are original and six copies of its Opposition to Motion to Enlarge Issues filed by White Broadcasting Partnership.

This pleading is directed to the Honorable Administrative Law Judge Edward Luton.

Please communicate with the undersigned should you have any questions or if you need any assistance.

Respectfully submitted,


Avelino G. Halagao
AVELINO HALAGAO & ASSOCIATES
Counsel to JEM Productions
Limited Partnership

Enclosures

cc: As per Certificate of Service

RECEIVED

JUN 17 1991

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket 91-10
Charley Cecil & Dianna Mae White)	File No. BPH 891214MM
d/b/a WHITE BROADCASTING)	
PARTNERSHIP)	
)	
<u>et al.</u>)	<u>et seq.</u>
)	
For Construction Permit)	
for a New FM Station on)	
Channel 289A in)	
Baldwin, Florida)	

To: Honorable Edward Luton
Administrative Law Judge

OPPOSITION TO MOTION TO ENLARGE ISSUES AGAINST
JEM PRODUCTIONS LIMITED PARTNERSHIP

JEM Productions Limited Partnership ("JEM") by its attorneys and pursuant to Section 1.294 of the FCC Rules hereby submits its Opposition to Motion to Enlarge Issues Against JEM filed by Charley Cecil, d/b/a White Broadcasting Partnership ("White") on May 24, 1991. In support whereof the following is shown:

In its Motion to Enlarge Issues ("Motion"), White requests the addition of the following issues against JEM:

1. Whether JEM has violated Section 1.65 of the Commission's Rules in failing to report timely changes in the status of the formation of the limited partnership, and changes in the status of its limited partners from individuals to corporations, and the impact of such violation on JEM's basic qualifications to be a Commission licensee;
2. Whether JEM misrepresented the status of its own formation as a limited partnership in its application to the Commission, such as to render it a sham limited partnership, and the impact of such misrepresentation on JEM's basic qualifications to be a Commission licensee;
3. Whether JEM misrepresented the ownership interest of Mr. Peter Knobel and/or Beylen Communications in its application to the Commission, and the

impact of such misrepresentation on JEM's basic qualifications to be a Commission licensee.

JEM Did Not Violate Section 1.65 of the Commission's Rules

1. Section 1.65 of the Commission's Rules provides:

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. ... whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate...

2. White alleges that JEM failed to report timely its discovery of its failure to file a Certificate of Limited Partnership with the State of Delaware. On May 9, 1991, JEM filed a Petition for Leave to Amend and Amendment which, inter alia, updates the Commission on the "true date" that JEM's Certificate of Limited Partnership was filed with the State of Delaware. This Petition contained an amendment that included a certification from the Secretary of the State of Delaware showing that the certificate of JEM Productions was filed with the State of Delaware on April 9, 1991. Upon learning that the Certificate of Partnership was not filed with the State of Delaware on December 14, 1989, as originally believed, Ms. Joyce Morgan took steps to remedy this error. JEM had no intent to deceive or mislead the Commission. There is no pattern of repeated violations of FCC Rules or other circumstances reflecting significant carelessness or inattentiveness.

3. White alleges that JEM failed to report timely to the Commission the changed status of its Limited Partners from individuals to corporate entities. The Limited Partners in JEM are passive principals with no attributable interests. The Limited Partners changed their status from individuals to corporations. JEM amended the JEM Limited Partnership Agreement

on February 26, 1991. A copy of the amended Limited Partnership Agreement was included in the production of documents exchanged with the competing applicants on May 17, 1991. The sole general partner in JEM believed it was unnecessary to inform the Commission of this change in status of the Limited Partners because the limited partners and the shareholders of the respective corporations are the same and there were no changes in their respective equity ownership interests. JEM believes this change in the status of the entity of the limited partners is not a matter involving any probable decisional significance in the eyes and mind of the Commission.

The reporting of information of limited partners to the Commission is a new phenomenon. It is now required that the limited partners be identified. This revision was done to check the abuses where the general partner is only a front and the limited partner is the one calling the shots. (See Report and Order, Revision of FCC Form 301, Docket 88-328, released April 20, 1989, paragraphs 21-25, attached as Exhibit A.)

4. Information regarding the media interests of Mr. Peter Knobel was reported to the Commission on May 9, 1991, in JEM's Petition for Leave to Amend and Amendment. The sole general partner in JEM, Ms. Joyce E. Morgan, submitted the said amendment to the Commission once she realized that Mr. Peter Knobel had acquired ownership interests in other applications for new FM Broadcast stations. Because Mr. Knobel is a passive limited partner with no attributable interest, Ms. Morgan did not keep herself knowledgeable regarding Mr. Knobel's personal activities such as his other broadcast ownership interests. Again, JEM had no intent to deceive or mislead the Commission by not reporting newly acquired ownership interests of Mr. Peter Knobel. It would appear that in order to totally insulate the general partner from the limited partner, it would be

advisable that they not communicate regarding matters pertaining to other broadcast ownership activities. One must realize that the limited partner's sole function in the limited partnership is to invest funds for the prosecution of the application, construction of the physical facilities and station operation for three months without revenue. The sole general partner understands that she is not permitted to communicate with her limited partner regarding matters pertaining to the day-to-day station operations, construction of the proposed facilities, and prosecution of the application before the FCC.

JEM believes its amendment of May 9, 1991, achieves its intended purpose of keeping the Commission and the competing applicants aware of changes in the information contained in JEM's application. The addition of a reporting issue to determine whether JEM violated Section 1.65 of the Rules is unwarranted. Moreover, it is clear that JEM did not misrepresent its status to the Commission nor did JEM attempt to mislead the Commission and the competing applicants as to the real status of the partnership.

WHEREFORE, in view of the foregoing, JEM respectfully requests that the presiding Judge deny White's Motion to Enlarge Issues Against JEM.

Respectfully submitted,

JEM PRODUCTIONS LIMITED PARTNERSHIP

By: 

Avelino G. Halagao
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Its Attorney

Date: June 17, 1991

EXHIBIT A

(Report and Order, Revision of
FCC Form 301, Docket 88-328
released April 20, 1989
paragraphs 21-25)

21. We have been faced with an increasing number of cases in which real parties-in-interest seek construction permits through sham corporate or partnership applicants. In KIST Corp.,³⁸ for example, we affirmed the Review Board's denial of an integration credit to an applicant where 95% of its stock was held by a minority female. The Board found she was not the true and actual owner for integration purposes. Rather, it found the 5% stockholder, who made a gift of 95% interest in the corporation to the minority female, guaranteed the bank loan and provided \$70,000 to prosecute the application, was the real owner for integration purposes. Similarly, integration preferences have been denied in several other cases in which it was determined that an applicant's organizational structure was erected to take advantage of a comparative preference.³⁹ While the KIST 5% shareholder holds an attributable interest and would therefore be identified in a Form 301 application, a 4% shareholder, who need not currently be identified, could easily perpetrate the same scheme.

22. There is the potential for similar abuse in limited partnership arrangements. In Louisiana Super Communications Ltd.,⁴⁰ for example, the Review Board discounted an integration preference to a female general partner where it became evident that the limited partner would have complete control over the operation and management of the partnership.⁴¹ This type of sham

38 99 FCC 2d 173 (Rev. Bd. 1984), modified 58 RR 2d 1483 (1985).

39 See e.g. Henderson Broadcasting Co., Inc., 63 FCC 2d 419, 426 (Rev. Bd. 1977) (Board refused a 100% integration credit after concluding that the majority shareholder, who would be integrated into management, did not have actual control); Capital City Community Interests, Inc., 2 FCC Rcd 1984 (Rev. Bd. 1987) (applicant was controlled by nonvoting shareholders seeking integration credit based on minority status of a "front" voting shareholder); N.E.O. Broadcasting Co., 103 FCC 2d 1031 (Rev. Bd. 1986), review denied, 1 FCC Rcd 380 (1986) (integration credit denied because corporate structure was constructed to take advantage of the Commission's comparative preferences).

40 102 FCC 2d 1293 (Rev. Bd. 1985).

41 The limited partner contributed 85% of the equity, petitioned the Commission in his own name to have the channel allocated, hired the consulting firm which prepared the application, signed the contracts for equipment and preparation of the application, hired legal counsel, obtained the transmitter site, advised the general partner on all application decisions (which advice was followed in every instance), prepared the financial plan, entered into bank agreement to provide the financing, and represented the partnership in negotiations with other applicants. See also Berryville Broadcasting Co., 70 FCC 2d 1 (Rev. Bd. 1978) (although integrated general partners claimed an integration credit was warranted, all financing was provided by the third

application often is difficult to detect under current filing requirements. An applicant need not identify a limited partner if it certifies that the limited partner will not be involved in any material respect in the management or operation of the proposed station. Once the applicant has so certified, the Commission does not generally inquire into, or have readily available information that would suggest the need to inquire into, the veracity of this statement. Moreover, little information is available from the application to enable competing applicants to challenge the certification.

23. Persons can also use sham corporations or partnerships to submit applications they would otherwise be precluded from filing under our rules. For example, a person who was previously disqualified as a licensee or is in a position to exceed our multiple ownership rules can use a sham entity to file an application that would otherwise be rejected.⁴²

partner; thus, true and actual control rested with that partner); Payne Communications Inc., 1 FCC Rcd 1052, 1058, 1060 (Rev. Bd. 1986) (integration credit denied where limited partner, inter alia, employed a research agency to find general partners with favorable qualitative enhancements for his application); Pacific Television, Ltd., 2 FCC Rcd 1101 (Rev. Bd. 1987), review denied, 3 FCC Rcd 1700 (1988) (limited partner provided 99% of the financing and paid for legal counsel who prepared the application and retained engineering consultant); Religious Broadcasting Network, 3 FCC Rcd 4085, 4097-98 (Rev. Bd. 1988), reconsideration granted on other grounds, 3 FCC Rcd 6216 (Rev. Bd. 1988) (general partners materialized shortly before the application was filed, limited partner held a 90% ownership interest and provided every major element of the application including financing, attorneys and its engineer).

42 We are currently investigating allegations that applicants have engaged in this type of activity in order to avoid disqualification for violating our rules. One individual involved had previously been found unqualified to be a Commission licensee. It is alleged, however, that he has filed multiple applications in various communities using fictitious applicants and disinterested parties. See Inquiry into Alleged Abuses of the Commission's Processes, 3 FCC Rcd 4740 (1988) ("Abuse Inquiry"). Cf. Bellingham Television Association, Ltd., 103 FCC 2d 222 (Rev. Bd. 1986) (investigation of alleged existence of an undisclosed principal in an application revealed that the applicant used a limited partnership in an effort to avoid a diversification demerit and to gain an integration credit). Religious Broadcasting Network, supra note 41 at 4090 ("Limited partner" held interests in multiple permits which precluded him from prevailing in his own right due to the closeness of the comparative contest).

24. Finally, we are aware of the potential for abuse where limited partners fund numerous applications. NAB described this potential in the renewal context:

[U]nder the current rules, parties can file numerous applications against various renewal applicants by simply changing their corporate or partnership names. Because such limited partners or other non-attributable ownership need not be listed on FCC Form 301, these applicants can pool resources to form companies designed to reap settlement bonanzas. These "investors," often with "settlement lawyers" at the helm, act as a gang of settlement buccaneers, sailing from state to state as the Commission's renewal deadlines come due across the nation.⁴³

25. Our current FCC Form 301 does not adequately foreclose unscrupulous applicants from perpetrating these and other types of abuse. Nor does our Form 301 provide sufficient information to permit identification of such abuses. The commenters repeatedly asserted that more ownership information will aid in identifying the real party-in-interest behind the applicant and prevent such persons from using sham applicants to gain some type of comparative advantage, or to avoid application of a Commission rule or policy. Since the Commission does not have resources sufficient to permit it to examine the bona fides of every application submitted, we are compelled to rely on competitors to detect and expose sham applications. Accordingly, we will require applicants to submit additional ownership information with their application. Specifically, applicants must (1) provide the date and place of filing of the applicant's enabling charter (e.g., its articles of incorporation or certificates of limited partnership), (2) identify all holders of nonattributable equity interests in the applicant except where there are more than 50 owners of equity interests, and (3) identify and submit future ownership contracts or agreements.

26. Date and Place of Incorporation. We currently permit the applicant to state its legal structure (i.e., limited partnership, corporation, etc.), but we do not require submission of either the underlying legal documents or the date and place of filing of the legal documents. The legal structure of the applicant is significant because it defines who is a party to the

⁴³ See Comments of NAB in BC Docket No. 81-742 at 29. See Abuse Inquiry, 3 FCC Rcd at 4740 (inquiry into whether multiple applications, apparently backed by a single person and using fictitious persons as principals, were filed for the purpose of reaching settlements rather than obtaining a license).

CERTIFICATE OF SERVICE

I, Avelino G. Halagao, counsel for JEM Productions, Limited Partnership hereby certify that on the 17th day of June, 1991, true copies of the foregoing "OPPOSITION TO MOTION TO ENLARGE ISSUES " was mailed by U.S. First Class, postage prepaid, to the following:

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* Hand-Delivered